

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Modernization of Payphone Compensation Rules)	WC Docket No. 17-141
)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996)	CC Docket No. 96-128
)	
2016 Biennial Review of Telecommunications Regulations)	WC Docket No. 16-132
)	

COMMENTS OF PUERTO RICO TELEPHONE COMPANY, INC.

Puerto Rico Telephone Company, Inc. (“PRTC”), by and through counsel and pursuant to the Commission’s Notice of Proposed Rulemaking and Order adopted in on June 22, 2017,¹ hereby respectfully submits its comments in support of the Commission’s proposal to “eliminate the annual audit requirement and associated reporting requirement” in Section 64.1320(f) of the Commission’s rules.² PRTC focuses its comments on three points in support of the Commission’s proposal: (1) the decline in payphone usage; (2) the disproportionate cost associated with the annual audit relative to the amount of compensation due to payphone service providers (PSPs); and (3) that the annual audit is unnecessary to ensure compliance with the underlying compensation requirements.

¹ *In the Matter of Modernization of Payphone Compensation Rules et al.*, Notice of Proposed Rulemaking and Order, WC Docket No. 17-141, FCC 17-79 (rel. Jun. 22, 2017), *amended by Erratum*, WC Docket No. 17-141 (rel. Jul. 5, 2017) (*Payphone Modernization NPRM and Order*). PRTC’s comments are timely filed in accordance with the Federal Register publication of the NPRM. 92 Fed Reg. 31743 (Jul. 10, 2017).

² *Payphone Modernization NPRM and Order* ¶ 6.

I. THE DECLINE IN PAYPHONE USAGE IS PRECIPITOUS AND SUPPORTS ELIMINATING THE AUDIT REQUIREMENT

The sharp decline in payphone usage is undeniable, and the downward trend will only continue in the future. As the Commission is aware, several stakeholders, including PRTC, have argued through petitions,³ comments,⁴ and letters⁵ predating the opening of Docket No. 17-141 that there has been a dramatic decline in the use of payphones over the last ten to twenty years.⁶ This decline is perhaps most clearly illustrated by the Commission's own data, which show that the number of payphones has gone from over 2 million in 1997 to fewer than 100,000 as of 2016.⁷ Not only is this decline significant, but it is also consistent with the number of payphones

³ Sprint Petition for Waiver, *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128 (Apr. 7, 2017) (*Sprint Petition*); Cincinnati Bell Any Distance Inc. Petition for Waiver, *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128 (Apr. 25, 2017) (*CBAD Petition*).

⁴ Comments of Sprint, *2016 Biennial Review of Telecommunications Regulations*, WC Docket No. 16-132 (Dec. 5, 2016) (*Sprint Comments*); Reply Comments of Cincinnati Bell Any Distance, *2016 Biennial Review of Telecommunications Regulations*, WC Docket No. 16-132 (Jan. 3, 2017) (*CBAD Reply Comments*); Cincinnati Bell Any Distance Inc. Notice of Ex Parte, *2016 Biennial Review of Telecommunications Regulations*, WC Docket No. 16-132 (Apr. 4, 2017) (*CBAD Ex Parte*); Comments of ITTA – The Voice of America's Broadband Providers, *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 et al.*, CC Docket No. 96-128, WC Docket No. 16-132 (May 5, 2017) (*ITTA Comments*).

⁵ USTelecom Ex Parte Letter, *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, (Apr. 21, 2017) (*USTelecom Ex Parte*); Puerto Rico Telephone Company, Inc. Ex Parte Letter, *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 et al.*, CC Docket No. 96-128, WC Docket No. 16-132 (May 31, 2017) (*PRTC Ex Parte Letter*).

⁶ See, e.g., *CBAD Petition* at 3; *CBAD Reply Comments* at 1; *ITTA Comments* at 4-5; *PRTC Ex Parte Letter* at 2; *Sprint Comments* at 2.

⁷ See FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Payphone Statistics: 1997- Most Recent*, Tbl. 1 (Apr. 11, 2017), available at <https://www.fcc.gov/general/iatd-data-statistical-reports>.

decreasing year after year. The experience in Puerto Rico is no different. According to data published by the Telecommunications Regulatory Board of Puerto Rico, the number of public telephones in Puerto Rico declined from 8,795 in 2006 (only three years after the Commission enacted the audit requirement) to 591 as of May 2017—a decline of more of than 93 percent.⁸ PRTC believes, as others already have noted, that the consistent year-on-year decline in the number and use of payphones will only continue in the future, especially given “the ubiquity of mobile []phones,” which have largely supplanted the need for payphones.⁹

The steady decline in payphone usage alone is substantial and persuasive evidence that the time has come to eliminate the annual audit requirement. The Commission originally adopted the audit requirement as well as other reforms to the payphone compensation regime in 2003 to “ensure that PSPs are ‘fairly compensated’ for all . . . completed calls” in accordance with section 276 of the Communications Act.¹⁰ At that time there were far more payphones in use than there are today and the amount of compensation paid could be substantial in many cases. While it may have been reasonable then for the Commission to enact regulatory safeguards to ensure that Completing Carriers fully paid PSPs for payphone-originated calls completed on a Completing Carrier’s platform, the facts are entirely different now. As the demand for payphone services has steadily decreased so has the compensation due to PSPs, and

⁸ See Junta Reglamentadora de Telecomunicaciones de Puerto Rico, *Informe Mensual: Estadísticas de Telecomunicaciones en Puerto Rico* at 8 (May 2017), available at <http://www.jrtpr.pr.gov/estadisticas-2/>.

⁹ See, e.g., *Sprint Comments* at 2. USTelecom asserts that payphone call volumes “have dropped by 99.5 percent as consumers increasingly make calls with their own mobile devices rather than payphones.” *USTelecom Ex Parte* at 2.

¹⁰ See *In the Matter of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, CC Docket No. 96-128, FCC 03-235, 18 FCC Rcd 19975, 19976, ¶ 2 (rel. Oct. 3, 2003) (*Payphone Compensation R&O*).

Completing Carriers no longer “lack[] incentive to come forward with compensation.”¹¹ This fundamental change in the market dynamics with respect to payphone services suggests that audit requirement is no longer justified, especially given the striking discrepancy of the cost of the audit relative to the sums audited, as discussed below.

II. THE COSTS OF THE AUDIT ARE ENORMOUSLY DISPROPORTIONATE TO THE SUMS BEING AUDITED

The result of the consistent and dramatic reduction in payments to PSPs is that there is no longer a realistic relationship between the costs of compliance with the audit requirement and the amount of compensation subject to the audit. PRTC agrees with the Commission and other stakeholders that the costs of the rule “now far outweigh[] any benefit that may have justified it initially.”¹² As a result of the rapidly declining use of payphones the amount of compensation due to PSPs has, quite predictably, declined.¹³ Yet, the costs associated with completing the annual audit have not decreased.

The numbers already in the Commission’s possession on this issue confirm the staggering degree of the disparity. Sprint and Cincinnati Bell have stated that the amount of compensation due to PSPs has declined more than 99% for Sprint and by more than 97% for CBAD between 2005 and 2016.¹⁴ Cincinnati Bell estimates that the cost of audit is presently five times the amount of the PSP compensation it pays annually¹⁵ and Sprint indicates that the costs of the audit

¹¹ *Id.* at 19983, ¶ 19.

¹² See *PRTC Ex Parte Letter* at 3 (citing *CBAD Reply Comments* at 2); see also *Payphone Modernization NPRM and Order* ¶ 9 (“We believe that the existing evidence about audit costs relative to payphone compensation suggests the costs of the rule now outweigh the benefits . . .”).

¹³ See, e.g., *Payphone Modernization NPRM and Order* ¶ 9; *PRTC Ex Parte Letter* at 3.

¹⁴ *Sprint Comments* at 2; *Sprint Petition* at 2; *CBAD Reply Comments* at 1; *CBAD Petition* at 3.

¹⁵ *CBAD Petition* at 3.

will be “approximately 15 percent of the per-call compensation Sprint paid in 2016” to the relevant PSPs.¹⁶

PRTC’s figures are equally as convincing. From 2005 to 2014 total compensation paid by PRTC to PSPs declined by more than 91 percent. That downtrend has only intensified in the last two years. Even as compensation paid to PSPs declined dramatically, the costs associated with the audits that PRTC conducts have not decreased—and in some years even *increased*. The cost of the audit is now more than 18 times the amount of the PSP compensation that PRTC pays on an annual basis.

PRTC respectfully submits that its own figures, in conjunction with those previously provided by Sprint and Cincinnati Bell demonstrate that the costs of the audit requirement now far outweigh the benefits. As noted in Section I above, one of the benefits envisioned by the audit requirement at the time of its adoption was to ensure that PSPs were fairly compensated. With the dramatic reduction in the amount of compensation due to PSPs occasioned by an equally dramatic decline in the use of payphones there is no longer any incentive for Completing Carriers not to compensate PSPs. As a result, PSPs effectively receive the benefit that the rule was originally intended to provide regardless of whether the rule is in place or not. Completing carriers must incur the cost associated with the audit as long as the rule is in effect, however, and, as shown by the figures above, that cost is significant in relation to the auditable sums. Accordingly, PRTC contends that the compliance costs incurred by Completing Carriers like PRTC now far outweigh the benefits of the rule, especially since the rule is no longer necessary to ensure that PSPs are fairly compensated.

¹⁶ *Sprint Petition* at 2.

III. THE ANNUAL AUDIT IS NOT NECESSARY TO ENSURE THAT PSPS ARE FAIRLY COMPENSATED

Finally, PRTC believes that the annual audit is not “necessary to ensure compliance with the underlying payphone compensation requirements”¹⁷ for two main reasons. First, as the Commission correctly notes, “relieving Completing Carriers of the audit requirement would not relieve them of their obligations to ensure that they are compensating PSPs for all compensable calls.”¹⁸ Doing so would only relieve Completing Carriers of the obligation to conduct the annual audit in accordance with Section 64.1320(f) of the Commission’s rules. Completing Carriers would still be required to “pay compensation to payphone service providers on a quarterly basis for each completed payphone call,”¹⁹ and nothing in the relief requested by PRTC and others changes or affects that obligation.

In addition, PRTC—like many other carriers—relies on a national clearinghouse to calculate its quarterly compensation obligations—a service for which it pays an annual fee and that is designed precisely to ensure that PRTC compensates PSPs correctly. The clearinghouse receives quarterly data logs from PRTC and PSPs, validates the data received, and calculates the payment owed to each PSP. As others have noted, the clearinghouse has investigation and dispute resolution processes in place to address compensation-related issues. The clearinghouse that PRTC uses also hires its own independent auditor to audit its dial around compensation system. The result is a smooth, efficient, and by now well-established process that, in PRTC’s experience, has yielded very few—if any—disputes. The relative infrequency of disputes, and the lack of any recent examples of failures to compensate PSPs is persuasive evidence that the

¹⁷ *Payphone Modernization NPRM and Order* ¶ 10.

¹⁸ *Id.*

¹⁹ 47 C.F.R. § 64.1310(a)(2).

interests of PSPs are being adequately protected and that the audit requirement therefore imposes an unnecessary and inequitable cost on Completing Carriers.

Beyond the dispute resolution mechanisms offered by the clearinghouses, PRTC would note that the Commission also retains the authority to investigate complaints in respect of the compensation obligation.²⁰ Consequently, PRTC submits that adequate safeguards exist beyond the annual audit requirement that ensure that PSPs are fairly compensated. These safeguards work—a fact that is demonstrated by the lack recent examples of failures to fairly compensate PSPs and the infrequency of such disputes since the audit requirement was adopted. Therefore, PRTC argues that the audit requirement provides no additional or needed protections to PSPs. The requirement is now redundant and only serves to increase operating costs for the relevant Completing Carriers.

IV. CONCLUSION

PRTC applauds the Commission's deregulatory stance in the *Payphone Modernization NPRM and Order* to re-evaluate a rule that, by all accounts, does not reflect modern marketplace realities. While the audit requirement was, at the time of its adoption, a sensible means of protecting the interests of PSPs market conditions have changed such that the cost of the audit now far outweighs the benefit. PRTC therefore fully supports the Commission's proposal to simply eliminate the audit requirement and encourages the Commission to do so expeditiously.

²⁰ *CBAD Petition* at 4; *ITTA Comments* at 3.

Respectfully submitted,

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